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LEWIS, A

337

11/06/89

☐ This application has been examined ☒ Responsive to communication filed on 9/22/89 ☐ This action is made final.
A shortened statutory period for response to this action is set to expire 3 month(s), 20 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-848. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 48 → 55 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☒ Claims 1 → 47 have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 48 → 55 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-848).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on _____, has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Art Unit 337

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and the finality of that action is withdrawn.

The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 51 and 53 are rejected under 35 U.S.C. 103 as being unpatentable over Fehder in view of Heitzmann.

Fehder discloses a tracheal intubation apparatus which includes means for receiving gas expired from a person (Figs. 1 and 2) and a detector within said means for receiving.

The difference between Fehder and claim 51 is a phase transport enhancer as part of the detector.

Heitzmann teaches a phase transport enhancer as part of a carbon dioxide detector. The phase transport enhancer of Heitzmann catalyzes the reaction between carbon dioxide and water to form carbonic acid (column 3, lines 22-33).

Inasmuch as it is well known to employ catalysts to speed up chemical reactions and to promote a more complete chemical reaction, it would have been obvious to employ any well known catalyst in the detector (9) of Fehder, including the catalyst of Heitzmann.

Claim 53 is included in Fehder as modified by Heitzmann.

Claims 48-50, 52, 54, 55 are rejected under 35 U.S.C. 103 as being unpatentable over Fehder in view of Heitzmann as applied to claims 51 and 53 above, and further in view of Gehring et al.

The difference between Fehder as modified by Heitzmann and claim 48 is the particular chemical species of phase transport enhancer.

Gehring et al. teach a phase transport enhancer (catalyst) tetrabutyl ammonium bromide for the purpose of enhancing (catalyzing) a reaction. It should be pointed out that tetrabutyl ammonium bromide has a chemical formula consistent with the generic formula defined in claim 48.

It would have been obvious to substitute the phase transport enhancer of Gehring et al. (i.e. tetrabutyl ammonium bromide) for the phase transport enhancer of Fehder as modified by Heitzmann (carbonic anhydrase) as a functionally equivalent substitution with no new or unobvious results accruing.

Art Unit 337

Claims 49-50, 52, 54, and 55 are included in Fehder as modified by Heitzmann and Gehring et al.

Claims 54 and 55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 54, method step (2) improperly derives antecedent basis from a part of the claim which defines an apparatus (a carbon dioxide detector). Since claim 54 purports to be a method claim, it should be limited to statements (method steps) which define a method of determining the proper placement of an endotracheal intubation device. As it is, the claim is ambiguous as to ~~whether~~ whether applicant intends it to be a method or apparatus claim.

Any inquiry concerning this communication should be directed to Aaron J. Lewis at telephone number 703-557-3125.

A.J.L.

A.J. Lewis:rms

November 2, 1989

Edgar S. Burr

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S.P.E.
GROUP ART UNIT 337